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EXAMINER

JACOBSON, MICHELE LYNN

ART UNIT

PAPER NUMBER

1794

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/578,966	Applicant(s) HUCKFELDT, GEBHARD RUDOLF	
	Examiner MICHELE JACOBSON	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/10/06</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 11 and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 11 recites that the "release thread contains a binding or softening constituent which is at least partially removed as a result of the treatment". Applicant's specification makes no mention of any binding or softening constituents nor does the specification provide any direction as to what treatments may be used to remove such constituents. Binding and softening constituents perform opposite functions and one of ordinary skill in the art would not be reasonably apprised as to what materials applicant intended to be included in the thread. Since applicant gives no indication as to what types of treatments such binding or softening constituents would need to be susceptible to, there is no way one of ordinary skill in the art would be reasonably expected to be able to carry out the method steps of the invention claimed in claim 11. Claim 12 is not enabled because applicant has provided no disclosure or direction for selection of a thread material that is both comprised of a binding or softening constituent which also loses strength as a result of drying. Such a thread is not disclosed in the specification

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and one of ordinary skill in the art would not be reasonable apprised as to the identity of such a thread in order to carry out the method recited in claim 12.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 1 and 8 recites the broad recitation "a packaging casing", and the claim also recites "in particular a sausage casing" which is the narrower statement of the range/limitation. For the

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purpose of expedited examination claims 1 and 8 will be interpreted to comprise a packaging casing.

6. Claim 2 is indefinite for the recitation of the “casing as claimed in claim 1 being a shape-determining casing net surrounding the actual sausage casing”. The casing claimed in claim 1 cannot also be a net. Additionally, it is impossible to determine what applicant intends by the recitation of the “actual sausage casing”. Was the casing recited in claim 1 an imposter? The examiner believes applicant may have intended claim 1 to recite a packaging casing for a sausage casing in which case claim 2 would be intended to recite wherein the packaging casing comprises a shape-determining net. However, it is unclear from the claim language that this is the case. For the purpose of examination claim 2 will be interpreted to encompass a net comprising the release thread recited in claim 1. Appropriate correction is required.

7. Claim 8 provides for the use of a packaging casing (i.e. method of opening it), but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced. Claim 8 recites an article of a knitted fabric with a release thread which comprises a packaging casing but does not positively recite any steps for the use of such a casing. The only step positively recited in claim 8 is waiting for the loss in strength of the release thread. The treatment compatible with the packaging contents or a result of time lapse do not constitute positively recited active steps, only the

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condition under which the loss in strength of the release thread is waited for. Claim 8 does not recite any steps for actually opening the packaging casing recited.

Claim 8 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

8. Claim 10 is indefinite for the recitation of "as a result of which their (the packaging casing and packaging contents) dimensional stability grows and the strength of the release thread is reduced". It is unclear from applicant's specification what the term dimensional stability is intended to mean. What dimension of the packaging casing in contents is increasing in stability is not disclosed to recited. Packaging casings and contents do not inherently have dimensional stability. It is unclear what parameter of the packaging casing is intended to be increasing in stability and therefore one of ordinary skill in the art would not be reasonably apprised as to the scope intended to be encompassed by claim 10. For the purpose of examination claim 10 will be interpreted to encompass the limitation that the release thread is reduced in strength as the result of a treatment.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-3, 5-10, 13, 14, 16-18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Froehlich et al. U.S. Patent No. 3,928,651 (hereafter referred to as Froehlich)

11. Froehlich teaches a reticulated net (such as a woven stockinette) for holding a meat product shaped into the form of a tubular casing formed from collagen filaments. (Col. 2, lines 60-65, Col. 3, lines 35-38) The collagen string has sufficient strength to hold the meat product together during cooking but becomes tender and soft during the cooking cycle. (Col. 1, lines 52-55).

12. The woven stockinette recited by Froehlich is interpreted by the examiner to be equivalent to the knitted fabric recited by applicant in claims 1 and 8. Since the collagen filaments used to make the stockinette become soft during cooking, the filaments recited by Froehlich are interpreted to be equivalent to the release thread recited by applicant and the regions of the stockinette these filaments hold together are interpreted to be equivalent to the seams recited in claims 1 and 8. As such, Froehlich anticipates a casing comprising temperature sensitive thread with a plurality of longitudinal seams that determines the shape of the meat (sausage) article packaged as recited in claims 1-3, 7-10, 13, 17 and 18.

13. Regarding claims 5, 14, 15 and 20: The stockinette recited by Froehlich softens as a result of cooking. The recitation of "embrittlement" in claims 5, 14 and 15 is interpreted by the examiner to encompass softening since softening of the filament

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would allow it to be more easily broken. As such Froehlich anticipates the limitation of the loss of strength of the thread being based on embrittlement as recited in claims 5, 14 and 15. Therefore Froehlich also anticipates a casing net with a plurality of seams as recited in claim 20.

14. Regarding claims 6 and 16: Collagen filaments such as those recited by Froehlich would be expected to be soluble in acid solution. As such, the stockinettes recited by Froehlich meet the limitation of being soluble in "a treatment medium" as recited in claims 6 and 16. Since applicant does not specify what treatment medium claims 6 and 16 are intended to encompass a thread soluble in any treatment medium meets the limitations of these claims.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 4 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schafer U.S. Patent No. 6,180,150 (hereafter referred to as Schafer) and Rueckert U.S. Patent No. 2,698,800 (hereafter referred to as Rueckert).

17. Schafer teaches the removal of netting surrounding a sausage product by the dissolution of a cellulose adhesive disposed between the netting and the sausage casing. (Col. 1, line 65-Col. 2, line 3) The net is recited to be generally felt to be

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unaesthetic and disturbing on the finished sausage product and is therefore desired to be removed. The removal of the net by pulling it off takes place after cooking of the sausage or meat product. (Col. 3, lines 16-20) The net recited is preferable a coarse or fine meshed fabric, or knit. (Col. 2, lines 49-50)

18. Schafer is silent regarding a thermoplastic release thread.

19. Rueckert teaches a synthetic binding thread for use in shaping meat products that is dissolvable or disintegratable at cooking temperatures. (Col. 1, lines 63-66) A synthetic string such as polyvinyl alcohol resin is recited to be dissolved by heat. (Col 1, lines 71-72 and Col. 2, lines 19-21) The string recited permits an item such as a cooked roast to retain its desired shape, but under continued heating at cooking temperatures dissolves and disintegrates so that no messy string need be cut away from the meat. (Col. 2, lines 31-35) The string is recited to be useful in the production of sausage as the string separating sausage links. (Col. 2, lines 42-44)

20. Both Rueckert and Schafer are directed towards inventions for the binding of meat products during cooking. The motivation to combine the heat sensitive string of Rueckert with the netting recited by Schafer would have been to simplify the removal of the netting recited by Schafer. Netting produced using a thread along a seam such as that disclosed by Rueckert would be even easier to remove from the sausage casing after cooking since the seam would release causing the netting to fall away from the casing when the adhesive recited by Schafer was dissolved. Such a process would make the step of pulling the netting off the casing unnecessary, thereby simplifying the process of the removing the netting.

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21. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used a thread such as that recited by Rueckert for a seam, or a plurality of threads of the netting recited by Schafer in order to simplify the process of net removal. The disposition of such a thread in the invention of Schafer would have produced the invention as claimed in claims 4 and 19.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELE JACOBSON whose telephone number is (571)272-8905. The examiner can normally be reached on Monday-Thursday 8:30 AM-7 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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